

- (c) The type of person;
- (d) The office held when the person is an officer;
- (e) The presence or absence of another relationship to the issuer when the person is a director or proposed director;
- (f) Reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing);
- (g) When the person is an underwriter, the type of underwriting arrangement, the role of the particular person as an underwriter and the availability of information with respect to the registrant; and
- (h) Whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11433, Mar. 16, 1982]

**§ 230.180 Exemption from registration of interests and participations issued in connection with certain H.R. 10 plans.**

(a) Any interest or participation in a single trust fund or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, issued to an employee benefit plan shall be exempt from the provisions of section 5 of the Act if the following terms and conditions are met:

(1) The plan covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of the

Internal Revenue Code of 1954, and is either: (i) A pension or profit-sharing plan which meets the requirements for qualification under section 401 of such Code, or (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code;

(2) The plan covers only employees of a single employer or employees of interrelated partnerships; and

(3) The issuer of such interest, participation or security shall have reasonable grounds to believe and, after making reasonable inquiry, shall believe immediately prior to any issuance that:

(i) The employer is a law firm, accounting firm, investment banking firm, pension consulting firm or investment advisory firm that is engaged in furnishing services of a type that involve such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees; or

(ii) In connection with the plan, the employer prior to adopting the plan obtains the advice of a person or entity that (A) is not a financial institution providing any funding vehicle for the plan, and is neither an affiliated person as defined in section 2(a)(3) of the Investment Company Act of 1940 of, nor a person who has a material business relationship with, a financial institution providing a funding vehicle for the plan; and (B) is, by virtue of knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation issued to a participant in either a pension or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, and which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act.

[46 FR 58291, Dec. 1, 1981]